

## **INITIAL STATEMENT OF REASONS**

### **STANDARDIZED PERMIT APPLICATION PROCEDURES**

**DEPARTMENT REFERENCE NUMBER: R-2005-11**

Office of Administrative Law Notice File Number: Z-07-0313-09

#### **PROBLEM, REQUIREMENT OR OTHER CONDITION ADDRESSED**

In 1993, Health and Safety Code section 25201.6 <sup>(1)</sup> established the standardized permit tier for certain activities at existing hazardous waste facilities, and DTSC developed regulations that established the application process. Eligible facilities received interim status that provided a temporary form of authorization for existing facilities to continue to operate while the permits for these facilities were being processed. Interim status has been available to numerous different categories of hazardous waste management facilities, at both federal and state levels, over a period of years, as the regulations for these facilities have incrementally been developed. Standardized permit interim status is no longer available, so section 25201.6 is now outdated, and does not provide clear direction for eligibility for the standardized permit tier. DTSC is directed to issue hazardous waste facility permits to the standardized permit facilities, but the details of the procedures and requirements for these permits are not specifically addressed in section 25201.6.

The original standardized permit regulations dealt only with existing facilities and interim status. In a 2002 regulations revision, DTSC inadvertently removed the language describing the permit application process. In addition, even the original regulatory language is no longer strictly applicable, because interim status is no longer available, and because a proposed, rather than only an existing, facility may now apply. The application process needs updating and clarifying. Changes are also needed as a result of other regulation packages. Current article 5 <sup>(2)</sup> of chapter 45, Reuuirements Applicable to the Operation of K-12 Schools Hazardous Waste Collection, Consolidation and Accumulation Facilities (SHWCCAFs) Deemed To Have A Permit By Rule, mistakenly includes two sections that apply only to standardized permitting. For clarity, the standardized permit sections are being proposed to be removed from article 5 and placed in a new article dedicated to standardized permitting, article 6.5, chapter 20, division 4.5, title 22.

The proposed regulations clarify that the application requirements for a standardized permit are in chapters 14 <sup>(3)</sup>, 20 <sup>(4)</sup> and 21 <sup>(5)</sup> of division 4.5, title 22, California Code of Regulations. DTSC staff have created extensive guidance to assist applicants through the permit process, but the eligibility and

operating requirements are the same, whether or not DTSC's guidance for the facilities is used to prepare the application.

A list of the universe of facilities currently in the standardized permit tier is attached to this document <sup>(6)</sup>. The original permits of sixteen of the original universe of standardized permit facilities will be expiring in 2007; these facilities must soon begin preparing their permit renewal applications. The revised regulations are therefore needed to clarify the permit renewal application process for both the facilities and DTSC reviewers. In addition, the application process and operating requirements also apply to applicants for proposed (new) standardized permit facilities.

## **EFFORTS TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS.**

The federal hazardous waste management program does not have a permitting tier equivalent to California's standardized permit tier, as California's standardized permit tier applies only to those activities not regulated under the Resource Conservation Recovery Act (RCRA). The federal RCRA standardized permit process <sup>(7)</sup> created in 2005, applies to a different universe of regulated activities and wastes than does California's standardized permit tier, so, despite the names, the regulations are not comparable.

## **STUDIES RELIED ON**

No studies were relied on. DTSC has found this rulemaking to be exempt under the California Environmental Quality Act (Public Resources Code section 21000 et seq.). A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted. The proposed regulations are based on the original standardized permit statutes, the original standardized permit regulations.

## **ALTERNATIVES CONSIDERED**

- (1) **Do nothing.** The current regulations applicable to standardized permit facilities would remain in effect.

**Pro:** no up-front DTSC resources needed to develop regulations.

**Con:** does not provide correction and clarity; does not provide accurate guidance to permit applicants.

- (2) **Develop updated, organized and clarified regulations (recommended alternative).** These regulations will help both owners and operators of existing standardized permit facilities, and new permit applicants, to understand the permitting process.

**Pro:** corrects and clarifies the applicable regulations; will help permit applicants to submit a complete permit application package, thereby expediting the processing of the permit.

**Con:** DTSC resources are needed to develop the regulations.

This rulemaking is not considered complex nor does it involve a large number of proposals that cannot be reviewed under the public comment period.

## GENERAL STATEMENT OF REASONS

**CHANGES TO TITLE 22, CALIFORNIA CODE OF REGULATIONS:** Add new article 6.5, titled Standardized Permits, to chapter 20 of title 22, division 4.5, of the California Code of Regulations. Place the following sections into article 6.5: move existing title 22, chapter 20, article 6, sections 66270.67 and 66270.69, to sections 66270.69.1 and 66270.69.5, respectively. Add new section 66270.69.2. Move existing section 67800.1 and 67800.5 to sections 66270.69.3 and 66270.69.4, respectively. Make minor changes to reflect statutory amendments.

**CHANGES TO TITLE 40 CODE OF FEDERAL REGULATIONS:** None. There are no equivalent federal regulations.

## DETAILED STATEMENT OF REASONS

**Add new Article 6.5: Standardized Permits.** Changes are necessary for organizational clarity. Article 5 of chapter 45, intended to apply only to SHWCCAFs includes two sections that apply only to standardized permitting. The standardized permit sections are being removed from chapter 45, article 5 and placed, for clarity, in a new article specific to standardized permits, article 6.5, in chapter 20. The five sections applicable specifically to standardized permits are all being placed into this article.

**Section 66270.69.1.** This renumbered section is the same as existing section 66270.69, Standardized Permits, with a minor grammatical correction and a minor amendment to reflect a statutory update. The changes are as follows: (1) the standardized permit tier is available for eligible activities at both onsite and offsite facilities, not just offsite, (pursuant to the deletion of the word "offsite" from subsection (b) of section 25201.6 in Senate Bill (SB) 1291, chapter 640, statutes of 1995) <sup>(8)</sup> & <sup>(9)</sup>; and (2) a semicolon and the word "and" were added to subsection (a)(2) to improve the grammatical construction. "CFR" has been corrected to "Code of Federal Regulations" to maintain consistency with style requirements. The section renumbering is necessary to place the section into the new article for standardized permitting. There are no other changes to the language or intent of the section.

**Section 66270.69.2.** This new section provides specific instruction to owners and operators that want to qualify for or renew a standardized permit on the application package content requirements and procedures.

While this is a new section, and new regulations text, it does not change the eligibility requirements or operating requirements for the standardized permit facilities. The requirements for a standardized permit application package are not clearly defined in the existing statute or regulations, so clarification is needed. The operating requirements and procedures are identified in proposed section 66270.69.3, but the permit application procedures themselves are identified in this section, 66270.69.2. The standardized permit application and operating requirements are, for the most part, identical to those for a full permit treatment and/or storage facility, i.e., chapters 14, 20 and 21 of title 22, division 4.5. Current section 67800.1 (proposed section 66270.69.3) identifies chapter 14; the addition of the references to chapters 20 and 21 are added here for procedural clarity, but do not constitute new requirements. Chapter 14 identifies the operating requirements for all hazardous waste management facilities; compliance with chapter 20 procedural requirements is specifically identified in Health and Safety Code section 25201.6(h).

Chapter 21 (section 66271.1 et seq) itself describes its applicability. Section 66271.2 <sup>(10)</sup> states: "Any person who requires a permit under Health and Safety Code section 25201 shall complete, sign, and submit to the Department an application for the permit required under section 66270.1." A standardized permit facility may conduct some of the hazardous waste management activities defined in Health and Safety Code section 25201: "...no owner or operator of a storage facility, treatment facility, transfer facility...shall accept, treat, store or dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facility permit ..." Therefore, the citation to chapter 21 was added to this section, for clarity, to assist permit applicants in identifying the required procedures. The requirements of these chapters include, but are not limited to, the following: waste analyses requirements, security provisions, inspection requirements, staff training, location standards, preparedness and prevention, emergency procedures, manifesting and recordkeeping, maintenance of an operating record, report submittal, closure requirements, financial assurance, tank and container construction and operational standards, specified permit application procedures, specified permit modification procedures, and compliance with certain permit processing procedures. The amount of liability coverage required for smaller standardized permit facilities is the only operating requirement substantively different from the requirements for a RCRA-equivalent facility.

An explanation of the connection between Health and Safety Code section 25201.6 and the applicability of the chapter 14 operating requirements may be helpful, since section 25201.6 addresses in detail only the interim status phase of the standardized permit process. Section 25201.6(b) specifies that DTSC must develop regulations implementing standardized permitting. Section 25101.6(c)(1)(6) states: "The regulations adopted pursuant to subdivision (b)

shall include all of the following...Require that a facility operating pursuant to a standardized permit comply , at a minimum, with the interim status facility operating requirements...” In both existing 40 Code of Federal Regulations part 264 <sup>(11)</sup> and in the California Code of Regulations, title 22, chapter 14 standards apply to all permitted facilities. Similarly, in 40 Code of Federal Regulations part 265 <sup>(12)</sup> and in the California Code of Regulations, title 22, chapter 15 <sup>(13)</sup> standards apply to all interim status facilities. Therefore, in 1993, pursuant to 25201.6(b), and in accordance with the established requirements for permitted and interim status facilities, DTSC specified chapter 15 interim status operating requirements for the standardized permit facilities that qualified for interim status. When the standardized permit regulations were amended in 2002, changing the facility authorization focus from interim status to permits, DTSC changed the operating requirements referenced from chapter 15 (for interim status facilities) to chapter 14 (for permitted facilities), following the convention previously established for other permitted facilities. The chapter 14 citations for permitted standardized permit facilities have simply been retained in this current proposed rulemaking.

The specific citations and topics for the operating requirements for hazardous waste treatment and/or storage facilities, both RCRA-equivalent permit and standardized permit, are as follows:

**Identification number** - (Section 66264.11) The facility must obtain this number issued by DTSC. The number must begin with CAD or CAL.

**Waste analysis** - (Section 66264.13) The facility must maintain a waste analysis plan to ensure that wastes received from generators are within the scope of the facility's permit. A generator must supply the facility with an analysis of a representative sample of the waste being manifested to the facility. All facilities reserve the right to refuse waste that does not meet the criteria of the facility's permit.

**Security** - (Section 66264.14) The facility must maintain a security plan and system to ensure that entry to the active portion of the facility is controlled at all times.

**Inspection** - (Section 66264.15) The owner/operator must maintain a regular facility inspection schedule to ensure any malfunctions at the facility are identified and remedied.

**Personnel training** - (Section 66264.16) The owner/operator must develop a training plan for all facility personnel relevant to their positions to ensure that all personnel have adequate training to perform their duties safely. Facilities must maintain records of employee training.

**Ignitable/reactive/incompatible waste** - (Section 66264.17) Wastes of these types must be separated to prevent accidental ignition or reactions.

**Location** - (Section 66264.18) A facility located in a 100-year flood plain must demonstrate that the waste can be removed before a flood could reach the facility.

**Required equipment** - (Section 66264.32) Each facility must have an internal communication system, communication to outside emergency response personnel, fire suppression equipment, and an adequate water supply.

**Arrangements with local authorities** - (Section 66264.37) Prior arrangements shall be made with local emergency response authorities.

**Contingency plan** - (Chapter 14, Article 4) Each facility must develop and maintain a contingency plan that outlines the protocol to be followed in the event of an emergency at the facility. DTSC must be notified if the contingency plan is activated.

**Manifesting** - (Sections 66264.71, 66264.72, 66264.76) All waste transported to and from the facility must be manifested.

**Operating records** - (Section 66264.73) Each facility must maintain operating records that include waste received and treatment provided, location of waste within the facility, waste analysis results, contingency plan reports, inspection reports, closure cost estimates, treatment standard notifications, and a copy of the facility's authorization that is provided to generators.

**Annual report** - (Section 66264.75) The owner/operator must submit an annual report to DTSC and the appropriate Regional Water Quality Control Board by March 1 of each year that covers waste management activities at the facility during the previous calendar year.

**Closure** - (Chapter 14, Article 7) Each facility must prepare a closure plan that outlines the steps that will be taken to remove all hazardous waste from the facility at the end of the facility's operating life.

**Management of containers** - (Chapter 14, Article 9) Each facility that manages hazardous waste in containers must ensure that the containers are compatible with the waste, are closed except when adding or removing wastes and are not handled in a manner that could damage the containers.

**Management of tanks** - (Chapter 14, Article 10) Each facility that manages hazardous waste in tanks must ensure that the tank system is compatible with the waste, has sufficient strength to not collapse, rupture or fail. Any tank that does not have secondary containment must be certified as meeting these criteria by an independent, qualified professional engineer.

**Secondary Containment** - (Sections 66264.175 and 66264.193) Each tank and container storage area for liquids shall have impervious secondary containment that can contain the water from a 24-hour, 25-year storm (plus 10% of the

volume of the containers, or plus 100% of the capacity of the largest tank). The required date for compliance with the requirement for secondary containment depends on the age of a tank.

**Corrective action** - (HSC Section 25201.6) Each facility must submit a Phase I Environmental Assessment with the application.<sup>(14)</sup> This is an assessment of any past releases of hazardous waste at the facility, based on records, a visual survey, etc. Sampling and testing are not required for a Phase I Environmental Assessment.

Regarding financial responsibility requirements, the existing regulations (current section 67800.5) provide the smaller standardized permit facilities with sudden and accidental liability coverage requirements that are one-half (1/2) or less than the amount required for RCRA-regulated facilities and the large (Series A) standardized permit facilities. Each RCRA-regulated facility and Series A standardized permit facility must demonstrate that it has \$1,000,000 per event/\$2,000,000 annual aggregate of liability coverage. The amounts for the smaller standardized permit facilities are as follows:

Series B	\$500,000 per event/\$1,000,000 annual aggregate
Series C	\$300,000 per event/\$600,000 annual aggregate
Series Small-Quantity C	\$100,000 per event/\$200,000 annual aggregate

Rather than repeating the detailed technical requirements of these chapters, the standardized permit regulations cite the existing requirements. There are no changes from the current tier eligibility, operating procedures for the facility, or major changes to the application procedures.

**Section 66270.69.3.** This renumbered section is the same as existing section 67800.1, Requirements for Standardized Permit Facilities, with minor amendments to improve the grammatical construction, and to reflect regulatory updates and cited section number changes. The grammatical amendments are to change the period at the end of subsection (a)(1) to a semicolon, and the add the word "and" to the end of subsection (a)(2). These changes have no impact on the meaning of the section. An additional citation for permit modification classifications was also added: section 66270.42.5.<sup>(15)</sup> This section, promulgated by DTSC in 2002, gives an owner/operator conducting activities not regulated under RCRA the option of requesting or making a permit modification that may be procedurally less rigorous than the procedures for a RCRA-regulated activity. Section 66270.42.5 procedures are already available to standardized permit owners/operators, but citing it in section 66270.69.3 provides clarity and consistency. In addition, the previous citation to section 66270.69 was changed to section 66270.69.1, to reflect the renumbering of that section. Similarly, the previous citation to section 67800.5 was changed to section 66270.69.4 to reflect the renumbering of that section. Renumbering section 67800.1 to 66270.69.3 is

necessary to place the section into the new article for standardized permitting. There are no other changes to the language or intent of the section.

**Section 66270.69.4.** This renumbered section is the same as existing section 67800.5, Financial Responsibility for Facilities Operating Under a Standardized Permit. For a more-detailed explanation of the financial responsibility requirements applicable to standardized permit facilities, please see the discussion of financial responsibility in section 66270.69.2, above. The section renumbering is necessary to place the section into the new article for standardized permitting. There are no changes to the language or intent of the section.

**Section 66270.69.5.** This renumbered section is the same as existing section 66270.67, Transportable Treatment Unit Standardized Permit. The section renumbering is necessary to place the section into the new article for standardized permitting. There are no changes to the language or intent of the section.

(NOTE: the superscript numbers in this document match the numbering of the list of support documents and the support documents themselves.)



# **LIST OF SUPPORTING DOCUMENTS ACCOMPANYING R-2005-1I , STANDARDIZED PERMIT APPLICATION PROCEDURES**

1. Health and Safety Code, section 25201.6 (entire section)
2. California Code of Regulations, chapter 45, article 5, first page
3. California Code of Regulations, chapter 14, first page
4. California Code of Regulations, chapter 20, first page
5. California Code of Regulations, chapter 21, first page
6. List of authorized standardized permit facilities
7. RCRA standardized permit, 40 Code of Federal Regulations, Part 267, first four pages
8. Section 25201.6(b), as of Stats of 1994, SB 1579, ch. 1159 (includes term "offsite")
9. Section 25201.6(b), as of Stats of 1995, SB 1291, ch. 640 (does not include "offsite" limitation)
10. California Code of Regulations, section 66271.2
11. 40 Code of Federal Regulations, part 264, first page
12. 40 Code of Federal Regulations, part 265, first page
13. California Code of Regulations, chapter 15, first page
14. Health and Safety Code Section 25200.14, as cited in section 25201.6(i)
15. California Code of Regulations, section 66270.42.5, first page